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May 15, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 5, 2007

Case Number: TSO-0459

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

On November 21, 2006, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization" (hereinafter referred to as the "information statement"). The information statement sets forth two concerns.

The first concern relates to the individual's January 2006 reaction to medication. Since June 2005 the individual has been prescribed steroids to treat his multiple sclerosis (hereinafter "MS"). In January 2006 the individual had a severe reaction to the medication. The information statement referred to an evaluation of the individual performed by a DOE consulting psychiatrist. In his report setting forth the results of that evaluation the DOE consulting psychiatrist diagnosed the reaction as a "steroid psychosis." DOE consulting psychiatrist's July 21, 2006 report (hereinafter "psychiatrist's report") at 3. The psychiatrist's report found that the steroid psychosis could cause a significant defect in the individual's judgment and reliability.[1] The information statement indicates that the DOE consulting psychiatrist's finding that the

[1] Section 1. A. of the notification letter deals with a security concern under Criterion H. 10 C.F.R. §710.8(h). The basis for a Criterion H concern is a diagnosis of "an illness or mental condition." The notification letter indicated the diagnosis was steroid psychosis. However, much of section 1.A. deals with the individual's behavior during 2000-2005. During that period the individual was not taking steroids. Therefore, I believe those behaviors are not relevant to the DOE consulting psychiatrist's diagnosis of

individual has a defect in his judgment and reliability raises a security concern under Criterion H. 10 C.F.R. §710.8(h).

The second security concern specified in the notification letter is that the individual has engaged in conduct which tends to show that he is not honest, reliable or trustworthy. Criterion L, 10 C.F.R. §710.8(l). There are two bases for this concern. The first basis is the individual's behavior between 2000 and 2005. During that period the individual had "blowups which were often followed by a lack of memory of what had gone on." Psychiatrist's report at 3. The second basis is the individual's failure to notify the DOE that he was admitted to a psychiatric treatment facility in 2000.

The notification letter informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

At the hearing the individual presented testimony that he believes mitigates the DOE security concerns. Below is a summary of the testimony at the hearing.

II. HEARING TESTIMONY

A. The individual

1. The MS

The individual testified that in 1999 he had difficulty walking. His general physician performed an MRI and referred the individual to a specialist at a large regional hospital (hereinafter the "treating physician"). The treating physician diagnosed the individual with MS in April 2000. Transcript of Hearing (Tr.) at 15. The individual testified that since the 1999 MRI there have been no changes in his MS lesions. He believes his MS is stable and the medication prescribed by the treating physician is designed to minimize his MS symptoms, which include difficulty walking and weakness on his left side. Tr. at 16. The individual currently has yearly appointments with the treating physician to review and adjust his medication. Tr. at 15.

The individual described the various medications the treating physician prescribed to treat his MS symptoms. From 2000 to 2005 the treating physician prescribed methotrexate, which the individual characterized as an anti-inflammatory.[2] Tr. at 17. The individual testified that he took methotrexate once a week for five years. For the first 3 years during which he took methotrexate the individual became very tired and argumentative on the third day after he took the medication. Tr. at 53. He termed this reaction as "temper flare ups." Tr. at 54. The individual indicated that in late 2002 the stress is his life was reduced

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steroid psychosis. Therefore those behaviors do not relate to the Criterion H security concern. In retrospect I believe that a psychiatric diagnosis that included the 2000-2005 behavior would have provided the individual a better opportunity to present mitigation of the Criterion L security concern related to those behaviors.

[2] According to the National Institute of Heath's web site methotrexate is an immunosuppressant.

and he was prescribed medication to reduce his anger and fatigue. He testified that his temper flare ups ceased in "approximately 2002." Tr. at 55.

The individual testified that in January 2005 his MS symptoms, including left-side weakness, foot drop and fatigue, became more severe. Tr. at 18. The treating physician changed the individual's medication to methylprednisone, a steroid. Tr. at 18. The individual received a 15 day treatment of methylprednisone once every twelve weeks. On the first three days of the treatment the individual received an infusion of 1,000 milligrams of methylprednisone. Tr. at 19. For the next 12 days the individual received oral doses of methyprednisone. During that period the oral dosage was gradually reduced. This gradual reduction of the oral dosage is referred to as an "oral taper." Tr. at 21. The individual continues to receive methylprednisone every twelve weeks.

The individual testified that the methylprednisone caused him a "steroid anxiety problem" in January 2006. Tr. at 28. On the fourth day of the oral taper his blood pressure was very high and his heart was pounding. Tr. at 28. His wife called the rescue squad and they transported the individual to the hospital. Tr. at 39. At the hospital, the individual was treated for a reaction to steroids and was thereafter released. Tr. at 91. The level of methylprednisone infusion was reduced for the individual's next treatment. The level of the infusion was then gradually increased. The individual is currently receiving the original 1000 mg infusion. Tr. at 43. The individual testified that he has had only one severe reaction to the methylprednisone.

2. 2000 Depression Diagnosis

The individual testified that during the year 2000 there were two major stressors in his life. First he was responsible for his mother who was in and out of various hospitals before she passed away on November 8, 2000. Second his oldest son was a junior in high school and was suffering with severe attention deficit disorder. Psychiatrist's report at 2 and Tr. at 51.

The individual testified that a few days after his mother's death, he had symptoms of depression and his general physician recommended that he go to the emergency room at a local hospital. The local hospital evaluated him and found that he was not in immediate distress. They arranged for a future appointment with a social worker and released him. Tr. at 52. Later that day while the individual was resting at home his depression symptoms returned. His general physician suggested that the individual admit himself to a local psychiatric treatment facility where he would receive an immediate psychiatric evaluation. He was admitted to that treatment facility. Over the next two days he was evaluated by a psychiatrist (hereinafter "the treating psychiatrist"). Tr. at 52.

3. Temper Flare Ups

During 2000 the individual's sensitivity to methotrexate caused him to behave erratically. He characterized the erratic behavior as "temper flare-ups." He testified that during one temper flare up he lost control.

> I did hit my wife. There was a time when the compounding effects of her and my oldest son, the situation with my mother in having to deal with everything, with all that, yes, there was a time that I did hit her. It was not a pleasant recollection.

Tr. at 86.

4. Ongoing Psychiatric Treatment

Following the individual's discharge from the psychiatric treatment facility in November 2000 he had regular sessions with the treating psychiatrist. Tr. at 52. The treating psychiatrist provided counseling to deal with the individual's depression and temper flare ups. Tr. at 55. The individual testified that he and the treating psychiatrist discussed his anger about the ADD condition of his eldest son, his MS diagnosis and his grief related to his mother's passing. Tr. at 55. The treating psychiatrist prescribed a mild anti-depressant, Celexa. Tr. at 57.

The individual indicated that in 2002 his son went away to college, he had learned to accept the MS diagnosis, Celexa reduced his insomnia,[3] and Azatadine reduced his fatigue caused by MS.[4] Tr. at 57. As a result of his improvement in 2002, he determined that he no longer needed to continue to receive counseling from the treating psychiatrist. He testified:

> So by taking [the Celexa] and with my son going away, the stress was gone, the stressors of everything leading up with my mom were pretty much alleviated. Her estate was dissolved and done. Many of the stressors that were hitting right at that one point had gone away. And my visits to [the treating psychiatrist] had gone from weekly to, I believe at that point we were down to once every two months. And it was sort of -- I assumed it was a general agreement that, you know, I feel a lot better. So, you know, I don't need to continue [seeing the treating psychiatrist].

Tr. at 57.

The individual also testified that he saw a licensed social worker (hereinafter "social worker") on an as needed basis from September 2001 through the early part of 2006. Tr. at 77-78. He talked to her about the passing of his mother, the MS diagnosis and family problems. Tr. at 75.

5. Failure to Report

The individual admitted he did not report his 2000 admission to the psychiatric treatment facility as required by DOE regulations. Tr. at 58. He testified "At that time I completely forgot, and I can give you a laundry list of things that were going on." Tr. at 58. He testified that the failure to report was a "very bad mistake on my part." Tr. at 58. The individual testified that he reported the incident when he submitted his QNSP in May 2005. Tr. at 59. The individual testified that "I can't give any reason other than the fact I forgot, and it was wrong." Tr. at 63. He testified that "I knew I was supposed [to report the hospitalization], but I forgot." Tr. at 66.

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[3] The individual has also been prescribed Wellbutrin for insomnia/depression.

[4] The individual has at also been prescribed Amtidyne and Provical for fatigue. PSI at 16.

B. The Individual's Wife

1. The Individual's Depression

The individual's wife testified that in 2000 the individual experienced significant stress. She mentioned that that the individual was grieving about the loss of his mother, having difficulties with their eldest son and concerned about his MS diagnosis. Tr. at 107. She testified that after his mother's death she tried to find a psychiatrist who would evaluate the individual. She testified that the only psychiatrist that was immediately available was the treating psychiatrist and that in order to be evaluated by him the individual needed to be admitted to his psychiatric treatment facility. Tr. at 109. She drove the individual to the inpatient psychiatric treatment facility and the individual was admitted. Tr. at 109.

2. 2000-2005 Period

The individual's wife testified that that during the first few years of the 2000-2005 period the individual was very frustrated and angry. "He was just real frustrated about trying to get used to all the medicine. He never knew what the future was going to be." Tr. at 98. She perceived his frustration and anger as a call for help. Tr. at 98.

The individual's wife testified that during this period, the individual took methotrexate on Sundays. By Tuesday or Wednesday his blood counts would be very low. On the days his blood count was low, he would often take a nap immediately upon arriving home from work. Tr. at 114. On those days, in addition to being tired, the individual was easily frustrated and occasionally became argumentative. She testified:

> [The individual] is very quiet in nature. Not real active, not real talkative. He would be argumentative [after taking methotrexate]. We would talk more than usual . . . His speech was always clear, he was oriented, it was appropriate. . . . [I would explain to the individual] that his [intransient position in discussions] is a part, you know, of taking your medicine. Okay, he goes, yeah. I just need to [stop worrying about the subject being discussed].

Tr. at 96.

She described one incident in which the individual struck her. She testified

> He would become pretty weak, you know what I'm saying. It wasn't like he was aiming. It was like more of a flailing to me. But I got right in his face and told him that I would do the best I could for him. That I married him for better or worse. So whatever happened, I would take care of it. You know, he always apologizes. He hates that I got stuck with someone [who is] ill.

Tr. at 98.

She testified that the rescue squad transported the individual to the hospital in 2001 following his adverse reaction to his anti-inflammatory medication. Tr. at 105

3. Methylprednisone

The wife testified about the January 2006 reaction of Methylprednisone. She stated that the individual "was cherry red from the neck up. You could see his pulses, and he was shaking just a little bit. But he said, there's something going on. . . . My side is not giving away but my head is pounding off my head." Tr. at 102. She called the rescue squad and they transported him to the hospital. Tr. at 104.

4. Additional Testimony

She testified that she has never met with the treating psychiatrist. Tr. at 116. She testified that she has been to two or three group sessions with the social worker. Tr. at 118. She testified that the individual has been an ideal father. Tr. at 99.

C. Co-workers

The first co-worker has known the individual for 20 years. He has been the individual's supervisor and has worked closely with him for the last 4 years. Tr. at 125. He believes the individual is highly trustworthy and reliable. Tr. at 125.

The second co-worker has known the individual for 13 years. Tr. at 128. He has been the individual's supervisor on several projects during those 13 years. Tr. at 129. He believes the individual is reliable, confident and very knowledgeable in his professional field. Tr. at 129. He has never noticed any side effects from the medication the individual is taking for his MS. Tr. at 131.

The third co-worker has known the individual for 30 years. Tr. at 134. She testified that she trusts him and she believes he is very even-tempered. She has noticed that the individual sometimes has problems with his balance when he is walking. Tr. at 136.

D. The Individual's Pastor

The individual's pastor testified that he has known the individual since the individual was in high school. In the last five or six years he has been very close to the individual and his wife. He estimated that he sees the individual once a week. Tr. at 139. He mentioned that in addition to church activities, they have been at each others homes and have done a few things socially. Tr. at 139. He is aware the individual has MS and that he is taking medication. He has never seen any change in the individual's mental acuity nor has he ever seen a situation in which the individual was not in total control of his behavior. Tr. at 140.

E. The Individual's Friends

The individual's first friend testified he has known the individual and his wife for 20 years. Tr. at 119. During the 1990s she saw the individual and his wife on a weekly basis. She has seen the individual two or

three times in the last year. Tr. at 120. She believes the individual is very reliable and she has never seen him act inappropriately to his wife or children. Tr. at 121.

The individual's second friend testified that she has known the individual as a casual acquaintance for fifteen years. Tr. at 146. She has been in the individual's home on two occasions. Tr. at 147. She is aware that the individual has been diagnosed with MS. Tr. at 146. She believes the individual has maintained his mental acuity and is reliable. Tr. at 147.

F. Nurse Practitioner from the Regional Hospital

The Nurse Practitioner testified in the second part of the hearing that she has been a nurse practitioner specializing in MS for nine years. Transcript of April 4, 2004 telephonic session of the hearing (hereinafter Tr. II) at 4. She sees only MS patients in both a clinical and research setting. Tr. II at 5. She has treated the individual since 2000. She sees the individual once a year and she talks to him on the telephone several times each year. Tr. II at 6.

The Nurse Practitioner testified that she saw the individual on February 2, 2006. At that time, the individual reported that the methylprednisolone is very beneficial in treating his MS. He also reported that in October 2005 and January 2006 he had severe side effects to the steroids. Tr. II at 9. Those side effects included anxiety, panic anger rage and elevated blood pressure. Tr. II at 10. She testified that none of her patients have ever had a reaction similar to the individual. Tr. II at 14. However, she is aware that patients occasionally have steroids reactions. Tr. II at 14.

H. The DOE Consulting Psychiatrist

The DOE consulting psychiatrist testified that he diagnosed the individual with a steroid psychosis that caused outbursts. TR. II at 22. He also testified that

> I'm also delighted to hear that [the individual] can take the Ativan which helps when he feels that things are a little too high for him. It also changes my diagnosis from a psychotic situation, which is not uncommon in steroids but, nonetheless, does not apply here because taking the Ativan wouldn't help if it were a psychotic thing. I tend to think that what happened was that when he was taking the steroids he had an agitation and being agitated will respond very, very well to Ativan. So I think things are under control at this point.

Tr. II at 29. The DOE consulting psychiatrist indicated that he does not have any concern about the individual's current judgment and reliability. Tr. II at 23.

III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

IV. ANALYSIS

A. Criterion H Security Concern

The testimony of the DOE consulting psychiatrist and the nurse convinces me that the individual’s reaction to his steroid medication is currently under control and is unlikely to recur. Given that the steroid

psychosis is the only stated basis for the criterion H concern, I believe the individual has mitigated that concern.

B. Criterion L Security Concern

The Criterion L security concern is based on the individual's failure to voluntarily provide information that he was admitted to a psychiatric treatment facility in 2000 and on the individual's behavior that occurred during 2000-2002 when he had violent arguments with his wife and son and said things that he did not later remember. The individual testified that he will provide all required information to the DOE in a timely manner and that his violent behavior associated with his "temper flare ups" are unlikely to recur. I must analyze those positions in order to determine whether the individual has mitigated the Criterion L security concern.

1. Failure to Provide Required Information

The DOE relies on its clearance-holders to report unfavorable information regardless of whether they are embarrassed by it or unsure of the consequences. When an individual fails to report unfavorable information, it leads the DOE to question whether that individual can be trusted to be candid with the DOE and report negative information in the future. My review of the record and my perception of the individual's testimony caused me to believe that the individual continues to have difficulty providing the DOE with candid information and I am therefore not convinced that he will be candid with the DOE in the future.

The individual admitted that he failed to notify the DOE that he was admitted in 2000 to a psychiatric treatment facility. The individual testified that in 2000 there were many problems in his life that caused him to forget to report the information to the DOE. I believe that the individual's failure to provide the information in 2000 was an oversight. However, I note that the individual's statement in the March 29, 2006 personnel security interview (PSI) that during his yearly refresher briefing "it would always come up and I thought . . . it was stupid, very stupid on my part. I should've [reported it]." DOE exhibit 7 (hereinafter 2007 PSI) at 19. That statement in the PSI convinces me that the individual knew that he had an obligation to report the hospitalization to the DOE. Therefore, I believe the individual was not candid at the hearing when he testified when preparing his QNSP in 2005 "It hit me like oh, my God. And then it just – I haven't reported this. So it was I'm putting it in [the QNSP] and I had to face the consequences." Tr. at 62.

Another example of the individual's failure to be candid at the hearing is his testimony about his behavior during his 2000-2002 temper flare ups. At the hearing, the individual testified that he hit his wife once. However, in his PSI he indicated there were "some spectacular" fights. He also said there "were times that I actually did, I hit [my wife]." DOE Exhibit 7 at 12. Also during the PSI he indicated "I hit them (son and wife) and I have kicked them but as far as emergency room damage or anything like that, no." DOE Exhibit 7 at 17. I believe that the discrepancy between his hearing testimony and the PSI regarding violence in his home during 2000-2002 is a further indication of the individual's unwillingness to provide to the DOE accurate information that he considers unflattering to him. Furthermore, his statement that he hit and kicked them but there was no "emergency room damage" indicates his current testimony about the level of violence is his home is a callous minimization of a serious behavior problem. This minimization in the PSI also indicates that he is not willing to be candid with the DOE.

Another reason I am not convinced that the individual is being truthful about his behavior during the 2000-2005 period is his failure to provide testimony and documents from witnesses that would have been familiar with his behavior at home during that period. In order to convince me that the 2000-2005 temper flare up behavior is not an ongoing security concern the individual must present more than his own testimony. I suggested to the individual's attorney that he "produce witnesses that are familiar with [the individual's] behavior off the job." Telephone Memorandum of January 16, 2007 conversation with the individual's attorney. That memorandum was provided to both parties on the same date as the conversation. The individual testified that he had a number of sessions with a social worker during the 2000-2005 period. His wife testified that she attended 3 of those sessions. The individual did not submit the social worker's treatment notes, nor did he call her as a witness. The individual's oldest son is now 22 years old. He lived at home between 2000 and 2002 and was familiar with the individual's behavior. He did not testify. Finally, the witnesses that did testify were not familiar with the individual's behavior inside his home and seemed to have little knowledge about the individual's behavior inside his home. Therefore, the individual has failed to bring forward sufficient evidence to convince me that his testimony minimizing the significance of the temper flare up behavior described in the notification letter is accurate.

I also believe that the individual's wife and he both minimized the violence that occurred in their home. This finding is based on the PSI statements discussed above and several other statements during the PSI that suggest there was significantly more violence in his home than either one of them revealed at the hearing. Some incidents he described during the PSI were:

1. His wife hit him in the head with a can and he received five stitches. 2006 PSI at 11.
2. His wife saw a doctor after he grabbed her hand. 2006 PSI at 12.
3. He broke his hand trying to get into the front door of his home. 2006 PSI at 8.

I note that the individual is usually overly detailed and obsessive in his testimony on issues that are more neutral. For instance, when he testified about his methylprednisone he gave many details about the treatment and the benefits. Tr. at 22-26. He also provided details which seemed unnecessarily excessive such as initially he took three days off from work to receive the infusions while more recently he only takes 1 ½ hours of leave on the day of an infusion. Tr. at 23. In his report, the DOE consulting psychiatrist reported noted that the individual "could not stop talking until he had filled in all the details. I thanked him and put my pen in my pocket. I thought that perhaps if he saw me not taking any more notes he would get the message, but he did not. He continued to talk." Psychiatrist's report at 2. Therefore, the DOE psychiatrist also believed that the individual tends to be overly detailed in his descriptions.

Given the tendency of the individual to provide elaborate unnecessary details, I find the brief testimony of the individual and his wife that there was only one minor physical incident where the individual hit his wife to lack credibility. Neither the individual nor his wife readily provided full details about the violence. This lack of detail about events inside his home further leads me to suspect the individual credibility. Given my finding that the individual's testimony was not totally candid at the hearing, I am unable to accept his statement that he will report unflattering information to the future.

2. Temper Flare Ups

Generally, in order to mitigate a security concern based on behavior that was caused by medication or a mental disorder, an applicant for an access authorization must bring in medical professionals. These professionals usually testify about the treatment the applicant has received, the likelihood the applicant's

symptoms will return and the ability of the applicant to manage the symptoms if they should return. Positive testimony by medical professionals has been used by a number of hearing officers as the basis for a finding that an individual has mitigated a DOE security concern. *See Personnel Security Hearing* (Case No. TSO-0405), 29 DOE ¶ 82,976(2006)(Bipolar). *Personnel Security Hearing* (Case No. TSO-0189), 29 DOE ¶82,820(2005)(Depression). In this case, the individual testified that his temper flare ups have stopped. However, the individual has not brought forward the psychiatrist or social worker who treated him between 2000-2005. The nurse practitioner had no knowledge of the individual's temper flare ups. Experts that were knowledgeable about the individual's temper flare ups could have provided a diagnosis of the cause of the individual's violence. They also could have also provided a description of the individual's medication and therapy, the efficacy of the individual's treatment, and his prognosis for future behavioral problems. Such experts could have provided information on the individual's ability to manage future anger problems. Without specific professional testimony regarding the individual's anger problems, I am unable to conclude that the individual has mitigated the Criterion L security concern raised by his 2000-2002 behavior.

V. CONCLUSION

I have concluded that the individual has mitigated the DOE security concerns under Criterion H of 10 C.F.R. § 710.8. However, I have concluded that the individual has not mitigated the Criterion L security concern. In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker
Hearing Officer
Office of Hearings and Appeals

Date: May 15, 2007